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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 125 (PKC)

5 NESTOR MURILLO BOCANEGRA,

6 Defendant.

7 -----x

8 December 8, 2017  
9 1:00 p.m.

10 Before:

11 HON. P. KEVIN CASTEL,

District Judge

12 APPEARANCES

13 JOON H. KIM

14 Acting United States Attorney for the  
Southern District of New York

15 SHAWN G. CROWLEY

Assistant United States Attorney

16 SIDLEY AUSTIN LLP

17 Attorneys for Defendant

18 TIMOTHY J. TREANOR

ALEXA POLETTA

19 BIANCA CADENA

20 Also present: DAVID MINTZ, Spanish Language Interpreter

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1 (Case called)

2 THE DEPUTY CLERK: For the government.

3 MS. CROWLEY: Good afternoon, your Honor. Shawn  
4 Crowley for the government.

5 THE COURT: Good afternoon, Ms. Crowley.

6 MR. TREANOR: Good afternoon, your Honor. Tim  
7 Treanor, Alexa Poletto, and Bianca Cadena for the defendant,  
8 Nestor Murillo Bocanegra.

9 THE COURT: Good afternoon to you all.

10 Good afternoon, Mr. Bocanegra.

11 Mr. Treanor, the first thing I am going to do is I am  
12 going to go through the materials I have and the question will  
13 be whether I have everything I should have.

14 I should note at the outset that I have presided over  
15 this case since filing, including the motion to dismiss and the  
16 prior sentencing of a codefendant. But specific to Mr.  
17 Bocanegra, I have a presentence report, recommendation and  
18 addendum, revised on November 3, 2017. I have a memorandum  
19 from Mr. Treanor with attachments that is dated November 16,  
20 2017. And I have a letter from the government, dated November  
21 26, 2017.

22 Do I have everything I should have on the subject of  
23 sentencing from the defendant's standpoint?

24 MR. TREANOR: Yes, you do, your Honor.

25 THE COURT: Has the defendant read, reviewed and

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1 discussed with you the presentence report, recommendation and  
2 addendum?

3 MR. TREANOR: Yes.

4 THE COURT: Does the defendant have any objections to  
5 the facts set forth in the presentence report?

6 MR. TREANOR: No, your Honor.

7 THE COURT: Any objection to the guideline  
8 calculation?

9 MR. TREANOR: No, your Honor.

10 THE COURT: Does the government agree I have  
11 everything I should have on sentencing?

12 MS. CROWLEY: Yes, your Honor.

13 THE COURT: Does the government object to any of the  
14 facts set forth in the PSR?

15 MS. CROWLEY: No, Judge.

16 THE COURT: Any objection to the guideline  
17 calculation?

18 MS. CROWLEY: Not from the government.

19 THE COURT: I adopt as my findings of fact the facts  
20 set forth in the presentence report; and, further, I find that  
21 the guidelines were correctly calculated.

22 I will now give Mr. Treanor an opportunity to speak.

23 MR. TREANOR: Certainly, your Honor. And our  
24 arguments in support of leniency for Mr. Bocanegra are set  
25 forth pretty thoroughly in our sentencing submission, but I

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1 would like to highlight for the Court a couple of matters.

2           The first is that Mr. Bocanegra is an incredibly  
3 simple man. He is a fisherman with an eighth grade education  
4 from a rural, small town in Colombia. He has worked with his  
5 hands all of his life. He has a family. He has done things  
6 like sweeping streets. He is a fisherman. He has done some  
7 work on the docks. But he has worked at a very low level. He  
8 had some significant injuries in the more recent years of his  
9 life that limited his ability to work. He broke his knee and  
10 his right leg, tore his Achilles tendon. Those limited his  
11 ability to support his family, his children, his wife who he  
12 has been together with for many years. He had to stop work and  
13 receive support from his mother. He is very much a  
14 family-focused individual and would like to, obviously, get  
15 back to his family, who he believes needs him very much.

16           He is someone who clearly recognizes that he made a  
17 bad decision here. He is incredibly contrite. From the first  
18 day that I met him, Mr. Bocanegra said that he was prepared to  
19 accept his punishment for what he has done. His participation  
20 I think is worth focusing on.

21           Mr. Bocanegra agreed to, in exchange for compensation,  
22 participate in moving this shipment at issue in this case. He  
23 accepted some prepayment and was prepared to do what he was  
24 asked to do and to ride in the boat that was carrying a  
25 shipment of drugs. He became very ill when he was waiting to

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1 be told what to do and was in the hospital and had a fever.  
2 When the boat was ready to go, someone came to get him to tell  
3 him that the boat was ready to go. He was fearful, because he  
4 had already taken some of the payment and spent some of the  
5 money, that if he did not show up, that he would have problems.  
6 And so he did show up, got in the boat, proceeded to fall  
7 asleep or pass out in the hold, and was in that state when the  
8 Colombian police pulled over the boat and arrested him and  
9 everybody.

10 I emphasize his role not because of any lesser  
11 culpability. He knows what he did was wrong. But, really, his  
12 contribution to this effort was about as minimal as possible.  
13 He was out cold in the boat, not driving, not doing anything.  
14 He was then taken to a Colombian prison where he was for many  
15 months. He has been in prison now for 34 months, 12 of them in  
16 the United States. He was held in Colombia under very poor  
17 conditions in a very tough prison facility. He was brought  
18 here about a year ago when he was extradited here.

19 He is someone who, I think it's fair to say, did not  
20 understand the gravity of his conduct or the scope of the  
21 seriousness of what he was doing and the penalties that he  
22 might face. He finds himself in a prison very far from home,  
23 in a country that he has never been to before. He has left his  
24 family destitute and without support. He has basically been  
25 cut off from them because he does not have the funds to pay for

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1 the phone calls back home. He does have a very supportive wife  
2 and children in Colombia. He has got physical ailments that he  
3 has had to contend with here and has had a very difficult 34  
4 months since he has made this mistake in his life.

5 As your Honor knows full well --

6 THE COURT: How long was he in Colombian custody?

7 MR. TREANOR: He was in Colombian custody for a total  
8 of 22 months.

9 THE COURT: OK.

10 MR. TREANOR: In fact, your Honor, he was on the verge  
11 of signing an agreement with the prosecutor in Colombia for  
12 this conduct, and was ready to go to court, and then all of a  
13 sudden was removed. He did not actually enter a plea there,  
14 but was prepared to do so, and then suddenly he was put on a  
15 transportation vehicle and taken out of Colombia and brought  
16 here. His plea there probably would have negated this case and  
17 the extradition. I don't know if it was stopped before it  
18 happened. We are not aware that anyone had any focus on Mr.  
19 Bocanegra. The government has never told us he is a  
20 significant individual. In fact, our communications have  
21 always indicated that he is, not a nobody, but a low guy in all  
22 of this. But he was yanked out of there and thought he had  
23 resolved his situation. Again, even there he was contrite and  
24 ready to take his punishment for his actions.

25 I would note, as your Honor knows full well, that

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1 3553(a) requires the Court to impose a sentence that is  
2 sufficient but not greater than necessary to meet the  
3 objectives of that section. There have been a number of  
4 defendants in these boat cases who have been sentenced,  
5 including a codefendant by your Honor in this case. Almost all  
6 of them have received between 8 and 24 months. There are some  
7 exceptions, including the codefendant in this case who your  
8 Honor sentenced. I think that that individual was in an  
9 entirely different situation with a prior narcotics felony in  
10 the United States. But we believe that Mr. Bocanegra should  
11 not be any different from the group of other defendants who  
12 have received much more lenient sentences than the guidelines  
13 here, which we would submit is the applicable range. It is the  
14 range that it is under the guidelines, but in this particular  
15 case, these kinds of cases, it is quite draconian.

16 THE COURT: Thank you, Mr. Treanor.

17 Mr. Bocanegra, this is your opportunity to speak,  
18 address the Court directly, to bring to my attention any facts  
19 or circumstances that you believe I should take account of. If  
20 there is anything you wish to say, this is the time to say it.

21 THE DEFENDANT: Thank you very much, your Honor, for  
22 giving me this opportunity to address you today.

23 My name is Nestor Murillo Bocanegra. I am a  
24 fisherman, and I was born in the town of Choco. I lived there  
25 with my wife and four children.

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1 I wrote a letter to your Honor, but because I don't  
2 know the system, I wasn't able to send it to you. That's why I  
3 wrote this to say it to you.

4 I would like to tell you today that I am sincerely  
5 remorseful for my actions, and I understand that having  
6 participated in the transportation of drugs from Colombia to  
7 Guatemala was a mistake. I know that drugs do harm to people,  
8 and I regret having gotten involved in something like this.

9 I acknowledge the gravity of my actions and the effect  
10 that this type of illegal activity has on communities in  
11 general. I have experienced the negative effects of my  
12 actions; not only from having lived for the last three years  
13 under terrible conditions of incarceration, far from my home,  
14 in a foreign country where I have never been before, but also  
15 from seeing the consequences that these actions have had on my  
16 family, whom I deeply love.

17 Although this is not an excuse for the decision I  
18 made, when I accepted the money that I was offered for this  
19 job, my family and I were going through serious economic  
20 problems. For a long time I had been suffering from the  
21 effects of an injury that made it impossible for me to work  
22 because I was in a wheelchair, because what I generally used to  
23 do is fish and other types of manual labor. At the time, our  
24 economic situation was frequently so precarious that I didn't  
25 even have money to give my children sweetened water for



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1 breakfast. It was a very difficult situation to endure.

2 My arrest has done nothing but make my family's  
3 economic situation worse. My wife has tried to cover the basic  
4 necessities by working as a cook and doing laundry. This  
5 economic situation has had negative effects on my relationship  
6 with her and my children. Since my wife does not have money to  
7 send me, and never has, I often have to wait months to talk to  
8 my family. My greatest regret about having committed this  
9 crime is the bad example that I have given my children.

10 I understand the repercussions of my actions, and I  
11 can't wait to return to my family in Colombia. My family  
12 matters to me. They are fundamental for me and I want to be  
13 with them again. I have been in prison for 34 months, and here  
14 in the United States I have no family or friends. Since I have  
15 been in jail, I have had to try to avoid many problems.  
16 Despite all that, I will never again incur in this conduct, and  
17 I most respectfully ask your Honor to put yourself in my place,  
18 and I ask you to impose a sentence that will allow me to return  
19 to my family soon. I apologize for all the harm that I have  
20 caused, and if your Honor believes that I do not deserve to be  
21 released, then I will humbly accept your decision.

22 THE COURT: Thank you, Mr. Bocanegra.

23 This is the government's opportunity to speak.

24 MS. CROWLEY: Unless your Honor has questions, we will  
25 rest on our submission.

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1 THE COURT: Thank you.

2 This is the Court's statement of reasons for the  
3 sentence to be imposed on Nestor Murillo Bocanegra.

4 In sentencing Mr. Bocanegra, I have considered all of  
5 the materials that I referenced at the outset, including the  
6 arguments set forth in the defendant's submission. I have  
7 considered all of the factors under Section 3553(a). Although  
8 I need not recount all that I have considered, I will mention  
9 some of it.

10 In connection with the defendant's actions to which he  
11 has entered a plea of guilty, he participated in a conspiracy  
12 which included the transportation of large quantities of  
13 cocaine, and in this instance, there were 350 kilograms of  
14 cocaine on board the vessel. It was a flagless vessel and it  
15 was interdicted in international waters in the East Pacific  
16 Ocean. There was no claim of registry, no flag of country.  
17 And the connection between the defendants in this case and the  
18 drug trafficking organization is far more direct than it is in  
19 many cases, as evidenced by the fact that the drug organization  
20 furnished counsel for the defendant, at its expense, in  
21 Colombia, and also that the trip was partially prepaid.

22 Now, that said, I quickly distinguish -- and Mr.  
23 Treanor was 100 percent correct about this -- the circumstances  
24 of this defendant's actions and that of the codefendant who I  
25 previously sentenced to 144 months of imprisonment. The

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1 codefendant had been arrested previously in connection with the  
2 seizure of 2.8 tons of cocaine and had admitted previously  
3 participating in 15 to 20 maritime drug trafficking operations,  
4 and he had been convicted in a federal court and sentenced to  
5 70 months. And after he completed his sentence he returned to  
6 Colombia and engaged in the same sort of conduct. So none of  
7 those circumstances apply specifically to Mr. Bocanegra.

8 I have taken into account his age, he is 47 years of  
9 age, his family circumstances, which he has very eloquently  
10 alluded to here today, and I have also taken into account the  
11 fact of his being held in Colombian custody.

12 Ordinarily I would conclude on these facts that the  
13 defendant should be sentenced to at least 40 months'  
14 imprisonment, a sentence well below the advisory guideline  
15 range, but the 40 months I reach is because, number one, I want  
16 to avoid unwarranted sentence disparities with other defendants  
17 convicted of similar crimes. This defendant is more culpable  
18 because of the more direct connection to the source of supply.  
19 And in terms of general deterrence, the sentence that is  
20 imposed in this case will be known to the drug traffickers who  
21 sent Mr. Bocanegra on this journey of misery.

22 I am, in my conscience, required to give him credit  
23 for the 22 months that he spent in Colombian custody before  
24 being extradited to the United States. So in that  
25 circumstance, in giving him credit for the time he spent, it

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1 seems to me that a sentence of 18 months' imprisonment, waiver  
2 of the fine, imposition of the special assessment of \$100 is  
3 sufficient but not greater than necessary to achieve the  
4 purposes of Section 3553(a).

5 And I note that the crime to which the defendant  
6 entered his plea of guilty was to the substantive crime of  
7 manufacturing, distributing and possessing with intent to  
8 manufacture and distribute the cocaine aboard a vessel within  
9 the jurisdiction of the United States.

10 Does the defendant or his counsel have any objection  
11 to the Court's proposed sentence or the statement of reasons  
12 for that sentence?

13 MR. TREANOR: Your Honor, just for clarity sake, in  
14 terms of the period of incarceration, that would be 18 months  
15 taking into account the 22 that had already been served in  
16 Colombia?

17 THE COURT: Correct. So what I will recite in the  
18 judgment is the defendant is sentenced to 18 months'  
19 imprisonment -- wait a minute. I think I have my numbers  
20 wrong. He was in Colombian custody for how long?

21 MR. TREANOR: 22 months. I think your Honor has the  
22 numbers correct.

23 THE COURT: I think you're right. So I will recite  
24 that the figure of 18 months' incarceration takes account of  
25 the fact that he spent 22 months in Colombian custody.

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Any objection, Mr. Treanor, to the proposed sentence?

MR. TREANOR: No, your Honor.

THE COURT: Same question for the government.

MS. CROWLEY: No, your Honor.

THE COURT: The defendant will please stand and the Court will impose sentence.

Nestor Murillo Bocanegra, it is the judgment of this Court that you are hereby remanded to the custody of the United States Bureau of Prisons to be imprisoned for 18 months. Following release from imprisonment, you shall be placed on supervised release for a period of three years with the following terms and conditions.

Now, I am imposing supervised release because I do not have confidence in what the position of the United States will be on the subject of deportation. So, therefore, I am imposing supervised release of three years.

During that period of supervised release, you shall not commit another federal, state or local crime, or illegally possess a controlled substance.

You must refrain from any use of a controlled substance.

You must cooperate in the collection of DNA.

The standard conditions of supervision 1 through 13 are imposed.

You must obey with the immigration laws and comply

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1 with the directives of immigration authorities.

2 As I said, based on limited assets, limited earning  
3 ability, the fine is waived, and the \$100 special assessment is  
4 imposed.

5 Mr. Bocanegra, you have the right to appeal the  
6 sentence I have imposed. If you cannot afford the cost of an  
7 appeal, you may apply for leave to appeal as a poor person.  
8 The time limits for filing a notice of appeal are brief and  
9 they are strictly enforced. If you request, the clerk of court  
10 will prepare and file a notice of appeal on your behalf  
11 immediately.

12 Do you understand all that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Anything further from the government?

15 MS. CROWLEY: Yes, your Honor. The government moves  
16 to dismiss all open counts that remain with respect to this  
17 defendant.

18 THE COURT: Without objection, that's granted.

19 Anything further, Mr. Treanor?

20 MR. TREANOR: No, your Honor.

21 THE COURT: Thank you all very much.

22 oOo